

From John R. Ewbank



August 9, 2001

The good news is that during the telephone conversation today with Examiner Shawn Smith, he agreed to expedite issuance of a Notice of Allowance for the method claims 17-20.

The bad news is that he persists in his requirement for restriction, thus making it necessary to: [a] file a divisional application for the article claims; or [b] appeal in an effort to prove the incorrectness of the restriction requirement, which if successful, might save us the cost of a filing fee and an issue fee.

I chose to file the divisional application, and FAXed the 15 pages to a new FAX number which Smith has been assigned. This cost a \$355 filing fee.

Within approximately one month, we might receive the documentation for the Notice of allowability, after which we will have six months for paying the issue fee. This provides the narrow window of opportunity which I had thought we had when we prepared the Simulation of the Patent. I will revise that to indicate an issue date of about April 9, 2002, showing only the presently allowed method claims.

Within approximately three months, we should have an action concerning the divisional case. My guess is that if this divisional case comes to Smith, he will try to pass the buck on the basis that some other examiner should handle it. Whatever Examiner gets it, and discovers the 1999 filing date, the thickness of the file, the allowability of the method claims, etc., that he/she will take the easy route of first action allowance after clarifying why the claims are allowable. Possibly he/she can more brownie points by issuing some kind of a first rejection, citing some patent not presently of record, while still essentially expect the case to issue with trivial work by the Examiner. Hence, I am optimistic now that we will eventually get the presently sought claims in two patents, but it will take time for the bureaucrats to grind through their procedures.

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McLaughlin 6,482,108, Exhibit C

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